EDITOR'S NOTE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WALTER KELLY, Superintendent of Attica Correctional Facility, ELIZABETH HOLTZMAN, District Attorney, Kings County, and ROBERT ABRAMS, Attorney General of the State of New York,

Petitioners,

-v.-

CHESTER MATUSIAK,

Deceased-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

PHYLIS SKLOOT BAMBERGER
THE LEGAL AID SOCIETY
FEDERAL DEFENDER SERVICES UNIT
531 United States Courthouse
Foley Square
New York, New York 00007
Tel. No.: (212) 732-2971

Attorney for Deceased-Respondent MATUSIAK.

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BRIEF IN OPPOSITION

QUESTIONS PRESENTED

1. Whether Matusiak's death by hanging makes this case moot and dismissal of the petition appropriate?

2. Whether the Court of Appeals' decision that Matusiak's plea was defective was based on the universally accepted test of Boykin v. Alabama, requiring that a plea be knowingly, intelligently and voluntarily entered?

3. Whether the Boykin principles had been presented to the State Courts, therefore exhausting State remedies?

4. Whether the Court of Appeals improperly overruled State findings of fact to determine the legal issue of the constitutional validity of the plea?

CONTENTS

QUESTIONS PRESENTED 1

TABLE OF CONTENTS i

TABLE OF CASES i

OPINIONS BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 2

Proceedings Subsequent to the Entry of the Second Circuit Judgment and Opinion 2

State Court Proceedings 3

Competency Reports 4

Competency Hearing 5

Plea 8

Post-Plea Proceedings 10

REASONS FOR DISMISSING OR DENYING THE WRIT 11

Matusiak is Deceased. The Case is Moot and the Petition Should be Dismissed or Denied 11

The Court of Appeals Decided This Case on the Universally Accepted Principles of Boykin v. Alabama ... 12

State Remedies Were Exhausted 14

The Court of Appeals' Holding is Based on Legal Conclusions 15

CONCLUSION 16

TABLE OF CASES

Boykin v. Alabama, 395 U.S. 238 (1969) 11, 12, 13, 14

Maggio v. Fulford, 462 U.S. 111 (1983) 15

Mintzes v. Buchanon, 85 L.Ed.2d 120 (1985) 11, 12

Pate v. Robinson, 383 U.S. 375 (1966) 11

Saddler v. United States, 531 F.2d 83 (2d Cir. 1976) 14

Suggs v. LaVallee, 570 F.2d 1092 (2d Cir. 1978) 11, 14

Warden v. Palermo, 431 U.S. 911 (1977) 11

Westbrook v. Arizona, 384 U.S. 150 (1966) 11

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Counsel for the deceased-respondent respectfully requests that this Court dismiss or deny the petition for writ of certiorari seeking review of the Second Circuit's judgment in this case.

OPINION BELOW

Counsel for deceased-respondent adopts petitioners' statement.

JURISDICTION

Counsel for deceased-respondent adopts the petitioners' statement.

STATEMENT OF THE CASE

Proceedings subsequent to the entry of the Second Circuit judgment and opinion

On March 20, 1986, the Court of Appeals entered its order and judgment requiring issuance of the writ of habeas corpus unless the State granted a hearing to determine competence of the deceased to stand trial.

On April 3, 1986, petitioners requested a stay of the mandate pursuant to F.R.A.P. 41(b). On April 11, 1986, the Second Circuit granted the stay requiring filing of a petition for writ of certiorari within thirty days. On May 7, 1986, the petitioners renewed their motion seeking a stay until June 18, 1986, and alleging that the period of the stay granted by the Court of Appeals "is shorter than the time required for appellees to prepare and file the petition with the Supreme Court." Petitioners asserted "that the law requires" that the petition be filed by June 18, 1986, and that they "will be unable to complete

and file the petition before that date." They concluded by asserting the case would become moot if the application was not granted.

On May 20, 1986, the Court of Appeals denied the stay except to grant the petitioners until May 27, 1986, to seek a stay from the Supreme Court.

On June 6, 1986, no stay application having been sought in the Supreme Court, the Court of Appeals issued its mandate.

On June 12, 1986, the district court entered an order directing the issuance of the writ unless a hearing were held within thirty days to determine competence.

On June 14, 1986, the decedent died by acute asphyxiation as a consequence of a "ligature around the neck."

On or about June 14, 1986, the petitioners filed with the Court a motion for the recall and the stay of the Court of Appeals' mandate. Opposition to the motion was filed on June 16, 1986. On June 18, 1986, the motion was denied by Justice Marshall. On that same date the petition for writ of certiorari was filed.

By letter dated July 28, 1986, the petitioners informed the Court, in writing, of the death of Matusiak. They stated that they would not withdraw their petition and would file a brief on the legal significance of the death.

State Court Proceedings

On June 13, 1979, Edward Mascia was suffocated with a pillow. Approximately one week later Chester Matusiak was arrested and charged with acting in concert to cause Mr. Mascia's death.

Shortly after he was arrested Matusiak was placed on a suicide watch. On June 26, 1979, he was sent to Kings County Hospital for a psychiatric examination pursuant to N.Y.Crim.Proc. L.§730. Two doctors, Dr. James Wulach and Dr. Adolph Goldman, found Matusiak fit to proceed.

Several months later in November, 1979, Matusiak was returned to Kings County Hospital. Another §730 examination was ordered and two psychiatrists found him not fit to proceed. One of these was Dr. Goldman, who changed his prior opinion of Matusiak's ability to proceed. A third psychiatrist found that he was fit to proceed. On November 21, 1979, a competency hearing was held at which the court found Matusiak competent to proceed.

1. The Competency Reports

A series of psychiatric reports on Matusiak's competency to stand trial was prepared in the course of his two commitments to Kings County Hospital, and these were admitted in evidence at the competency hearing.

In a joint report dated July 16 and August 1, 1979, Dr. James Wulach and Dr. Adolph Goldman noted that Matusiak had been in and out of jails and psychiatric hospitals since the age of 11. He had a history of "suicidal gestures." Matusiak said he felt paralysis as he tried to sleep, which might be due to demons sent by devils. Dr. Wulach stated in conclusory fashion that Matusiak understood the roles of the trial participants when they were explained to him in detail. However, Matusiak explained the roles of the participants to Dr. Wulach saying that the lawyer defended him, the judge would listen, and the District Attorney would see that he got sentenced.

To Dr. Goldman, Matusiak said he needed a lawyer to represent him in court, that the District Attorney prosecutes, and that judge "finds you guilty or not guilty."

On October 23, 1979, Matusiak was sent again from the detention facility to Kings County Hospital in a condition described a delusional, decompensated, and refusing medication. Matusiak refused to answer questions and left the room screaming.

On November 2, 1979, Dr. Richard Weidenbacher interviewed Matusiak at Kings County Hospital and concluded that Matusiak was

not capable of standing trial. Although Matusiak understood the charges, he was anxious, wary, impulsive, and unstable, and in Dr. Weidenbacher's opinion, incapable of properly assisting in his defense. He wanted to plead innocent and did not believe that Mr. Mascia was dead.

On November 5, 1979, Dr. Ruth Finch also examined Matusiak and found him improved over his condition on October 23-25. Matusiak said he understood what the charges were but that what happened was for the judge to decide. Matusiak wanted to return to court so the judge and jury would decide whether he was guilty. Dr. Finch found him competent to proceed.

On November 7, 1979, Dr. Adolph Goldman examined Matusiak and found him unfit to proceed. Matusiak said he thought Mascia was alive. He explained the functions of the trial participants: that Charles Moser, his assigned counsel, was to represent him in court, that the District Attorney was there for the "persecution," and that "a judge 'sees if I'm innocent or guilty.' Are you? 'I'll leave that for my judge to decide . . . when I go to the jury or trial.'" Matusiak insisted "I'm not going to cop out to a murder if the guy was never killed."

In a Report dated November 8, 1979, Dr. Daniel Schwartz stated that Mr. Moser said that Matusiak asked whether neutron bombs were striking his office. Mr. Moser also said that Matusiak told him the sun gets closer when he smokes. Matusiak reported that Richard Dyser, the codefendant, was speaking to him in the middle of the night, telling him to take the blame for the murder and that Matusiak's girlfriend, in the next cell, was being raped by guards and was calling for Matusiak's help.

2. The Competency Hearing

At the November 21, 1979, competency hearing Dr. Weidenbacher testified that based on examinations, he concluded that Matusiak was unfit to proceed to trial. While Matusiak understood the

charges against him, answered questions with cohesive and relevant responses, and could communicate with his counsel, he was anxious and had a history of repeated suicide attempts and drug use. Dr. Weidenbacher considered Matusiak incapacitated by virtue of anxiety, which was likely to produce further suicide attempts. The psychiatrist stated that Matusiak said he knew that Mascia, the alleged victim, was not dead, but Dr. Weidenbacher was not sure exactly what that meant.

Dr. Adolph Goldman testified that he examined Matusiak on November 7, 1979. Dr. Goldman found that Matusiak was oriented to his surroundings, and that he understood the charges against him and was able to discuss them. However, Goldman concluded that Matusiak's answers, while relevant to questions, may have been delusional, that he lacked the ability to cooperate with counsel and that his disordered thinking made him unfit to proceed. Matusiak had told Goldman that he (Matusiak) was quite religious and that he was holding a Bible, but it was a false Bible. He discussed his use of glue, carbona, and heroin, and his nervous breakdown in 1973 when he thought he knew what people would say before they spoke. Dr. Goldman said Matusiak believed Mascia was alive and there was a substantial risk that Matusiak would kill himself if he became convinced that Mascia was dead and if things did not go his way during the course of the trial.

Charles Moser testified that he had been assigned to Matusiak's case on July 13, 1979, and had had numerous telephone conversations and conferences with his client. Matusiak was unable to relate to Moser the circumstances surrounding his apprehension, arrest, and interrogation. Mr. Moser concluded that he could not adequately prepare the defense case for Matusiak and that he and Matusiak could not communicate in order to prepare and conduct a defense.

Matusiak himself testified that the hearing was being held to determine whether he was crazy or insane. He said he had a lot of thoughts on his mind, like "family and stuff -- the devil -- and I know they're in trouble." Matusiak said there was a war between the devil and man. He then asked what had happened to the lady who was sitting over there [in the courtroom?]. Matusiak described the job of the District Attorney: "to see if I'm guilty or innocent." He described the judge as one who judges the defendant to see if he is guilty or not guilty. As for a jury, Matusiak said, "a jury is like when you go to trial or something and they have jurors to see -- no, I don't know about court things too much." He described his lawyer as someone who defends him, "to see if I'm guilty or not, I think . . . . Something like that."

Matusiak was then asked how long he had been at Kings County changing his answer each time counsel asked the question and finally Matusiak himself asked how long he had been there. When asked if he smoked, Matusiak said he did once in a while but that he was quitting because it was not Christian to smoke because the body is a temple of the Holy Spirit. The judge found the testimony to be "away from the issues." Matusiak said he thought Mascia was alive and that he had seen someone who looked like Mascia at the jail.

The judge concluded that Matusiak was competent to stand trial

> considering all the doctors' testimony where they have said that he understands the nature of the charges, he has been able to discuss with them, with them, he becomes anxious when he begins to realize his legal straits, and that it would be for his best well being he should be hospitalized, but that he could discuss with counsel, as he did with them, and especially when he get a little off they were able to convince him to sit back down, let's talk again, counsel can do that too.
>
> I find the defendant fit to proceed.

3. The Plea

On October 6, 1980 -- almost a year later -- Matusiak entered a plea of guilty to one count of murder in the second degree. Defense counsel said that Matusiak desired to plead guilty despite the availability of an insanity defense to be presented through the testimony of a doctor and the record of previous psychiatric history and confinement.

On inquiry by the judge, Matusiak repeatedly changed his mind about whether he wanted to plead guilty or go to trial and raise his insanity defense.

The judge told Matusiak that he intended to sentence him to a term of 15 years to life, and Matusiak said he understood. The judge said that Matusiak had an absolute right to a jury trial, to call witnesses on his own behalf, to bring in doctors on his behalf, and to confront and cross-examine witnesses against him, and that, by pleading guilty, "what you do is give up a constitutional right. That's a right to have a trial by jury." Matusiak replied that he understood.

The judge then went on, seeking to elicit the facts of the crime. During the course of the colloquy, Matusiak conferred with his counsel 11 times. The judge inquired if Richard Dyser and Matsuiak killed Mascia. After a conference, Matusiak said, "he didn't kill him." The judge told Matusiak to relate what happened. After conferring with counsel, Matusiak said he did not want to talk about it. The judge said, "You have to talk about it. Tell me what happened. I wasn't there. I don't know. You tell me what happened. What happened during the night?"

Matusiak again conferred with counsel before explaining that "me and myself" were in the room and that he heard the guy that was killed making noises. He came into the room through an already opened window and the room had been robbed before "we

went in". When the man was making noises, Matusiak got some water and tried to give him some, but it was too late. Matusiak said the police told him Mascia died by suffocation by a "pitcher on him with a pillow on his face." However, Matusiak repeatedly stated he didn't know how the pillow got there. Then Matusiak said: "I killed the guy" ... "[w]hen I put a pillow over his face," that he tried to help Mascia, that he (Matusiak) didn't know what he was doing. Then the colloquy continued:

> THE COURT: If you're not sure, if you didn't know what you were doing, that sounds like a defense of insanity: "I didn't know what I was doing, and I did it."
>
> Now, which is it? Did you know what you were doing, or did you not know what you were doing?
>
> THE DEFENDANT: I didn't know what I was doing.
>
> THE COURT: If you did not know what you were doing, maybe a jury will believe what you will tell them. I don't believe you, and maybe a jury will believe you. Why don't you let the jury decide if you knew what you were doing. They'll make the decision for you better than I will.
>
> (Whereupon, the defendant conferred with counsel.)
>
> THE COURT: I can't hear you. You're afraid of what?
>
> THE DEFENDANT: That he will recognize me.
>
> THE COURT: Oh, you put the pillow over his face because you were afraid he would recognize you; is that right?
>
> (Whereupon the defendant conferred with counsel.)
>
> THE COURT: Is that what caused his death, that pillow over his face?
>
> THE DEFENDANT: Yes.

When the court asked whether Matusiak had any questions to ask the judge, Matusiak asked how long his sentence would be:

> THE DEFENDANT: How much time will I get for this?

> THE COURT: How much time you're going to get?
>
> THE DEFENDANT: Yes.
>
> THE COURT: 15 years to life.
>
> THE DEFENDANT: When will I be able to come out?
>
> THE COURT: After 15 years.
>
> THE DEFENDANT: After 15 years?
>
> THE COURT: Yes. Why, you think that's unfair? What about the guy who is dead? How much time do you think he's got?
>
> THE DEFENDANT: Never mind.
>
> THE COURT: That's right, he's doing a lot of time himself, isn't he? He's doing the rest of his natural life, because you killed him, didn't you?
>
> THE DEFENDANT: Yes.

When asked, Matusiak said he committed the crime by himself. The judge insisted that he stop being noble and say who was with him. After several conferences with counsel, Matusiak said that Dyser was with him but that he was not there at the time; that they went in together but he did not know where Dyser was. He said that Dyser did not help him, that he did it by himself.

The judge then accepted the plea.

4. Post-Plea Proceedings

On November 7, 1980, Matusiak was sentenced to a term of 15 years to life.

On appeal to the Appellate Division, the headnote to Matusiak's brief read he was

> DENIED HIS RIGHT TO DUE PROCESS (A) WHEN THE ARTICLE 730 HEARING COURT FOUND APPELLANT COMPETENT TO PROCEED, DESPITE THE FACT THAT THE ONLY TWO PSYCHIATRISTS WHO TESTIFIED FOUND APPELLANT IN COMPETENT TO PROCEED, AND (B) WHEN THE TRIAL COURT EXTRACTED A GUILTY PLEA FROM APPELLANT, WHOSE PRIOR AND EXTENSIVE PSYCHIATRIC HISTORY, AS WELL AS HIS BEWILDERED AND ERRATIC BEHAVIOUR AT THE PLEA, SIGNALLED THAT APPELLANT WAS TOTALLY INCAPABLE OF WAIVING HIS RIGHT TO TRIAL.

In the brief, Matusiak argued that a plea from an incompetent person violated due process, citing Pate v. Robinson, 383 U.S. 375, 378 (1966), and Suggs v. LaVallee, 570 F.2d 1092 (2d Cir. 1978). He also asserted that to plead guilty a defendant must knowingly waive his constitutional rights as required by Boykin v. Alabama, 395 U.S. 238 (1969), and that the inquiry required by Westbrook v. Arizona, 384 U.S. 150 (1966), had not been made.

The Appellate Division affirmed, 98 A.D.2d 997 (2d Dept. 1983), and leave to appeal to the New York Court of Appeals was denied, 61 N.Y.2d 910 (1984).

Thereafter, Matusiak filed a pro se petition for a writ of habeas corpus in which he argued that his plea was invalid because he was not mentally capable of knowingly and voluntarily entering a plea. This District Court denied the writ. The Second Circuit reversed, finding that the record did not show a knowingly, intelligently and voluntarily entered plea and that the question of Matusiak's competence to enter the plea was not adequately developed in the state court. Pet.App. at 19a.

REASONS FOR DISMISSING OR DENYING THE WRIT

I.

MATUSIAK IS DECEASED. THE CASE IS MOOT AND THE PETITION SHOULD BE DISMISSED OR DENIED.

On June 14, 1986, prior to the filing of the petition in this case, Matusiak died from acute asphyxiation as a consequence of a ligature around his neck.* The precedents of the Court have held that the death of a successful habeas petitioner warrants dismissal of a petition for writ of certiorari filed by the unsuccessful habeas respondent. Mintzes v. Buchanon, 85 L.Ed. 206, 120 (1985); Warden v. Palermo, 431 U.S. 911 (1977).

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*A copy of the death certificate is attached hereto.

Furthermore, no other action need be taken by the Court in connection with this case because the mandate of the Second Circuit issued when the respondent failed to file a petition in accord with F.R.A.P. 41(b), as well as a timely motion for a stay in Court. Because the Court of Appeals' mandate issued and the Supreme Court denied a motion to recall it, the order of the Court of Appeals is final. There is none of the ambiguity concerning the status of the judgment that is referred to in the dissenting opinion of Chief Justice Burger in Mintzes v. Buchanon, supra.

Finally, as we set out in the subsequent points, the opinion of the Second Circuit adheres to the traditional view that a plea must result from an intelligent and knowing waiver of rights and therefore presents no development in the law so as to fall within the categories of cases considered for certiorari jurisidiction.

II.

THE COURT OF APPEALS DECIDED THIS CASE ON THE UNIVERSALLY ACCEPTED PRINCIPLES OF BOYKIN v. ALABAMA.

In its petition for certiorari the petitioners have stated that the Court of Appeals applied a standard for judging competency to plead guilty which conflicts with that of other Circuits and the New York State courts. (Pet. at 9-13). Petitioners assert that the Court of Appeals applied a standard which requires a higher level of competency to plead guilty than that required for trial. However, the Court of Appeals did not use the standard described by petitioners and did not even rule on Matusiak's competency to plead. Rather, it held first, that Matusiak's plea was not knowingly, intelligently and voluntarily entered under Boykin, and second, that the record did not adequately develop the material facts on the question of competency. Pet.App. 19a. The first holding alone was sufficient to require

the conditional grant of the writ. The second holding only affected the form of relief -- a hearing on incompetence to be held before the state court with no direction concerning the standard of competence to be applied. That the basis for the decision is failure of the plea to meet the Boykin standards is repeatedly expressed in the opinion:

> The question of whether or not a plea of guilty has been entered voluntarily within the meaning of the Constitution is a complex one . . . .

Pet.App. 17a.

> Nonetheless, the ultimate "question of an effective waiver of a federal constitutional right in a proceeding is . . . governed by federal standards," Boykin v. Alabama, 395 U.S. at 243, and "the governing standard as to whether a plea of guilty is voluntary for purposes of the Federal Constitution is a question of federal law . . . ."

Pet.App. at 18a.

> The standard set by Boykin v. Alabama with respect to the voluntariness of a plea of guilty for federal constitutional purposes requires not only that the plea court inquire into the defendant's understanding of the charges, the proceedings, and the rights to be forgone, but also that it do so showing "the utmost solicitude of which [the court is] capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences." 395 U.S. at 243-44. The court should not accept such a plea "without an affirmative showing that it was intelligent and voluntary." Id. at 242.

Pet.App. at 19a.

> In these circumstances [Matusiak believed that the judge would decide his guilt and the judge did not nothing to disabuse him of that notion], we find it difficult to conclude that

> Matusiak's entry of his plea was intelligent and knowing or that the court's implicit finding that Matusiak understood the nature of the right he would forego is fairly supported by the record as a whole.

Pet.App. at 21a.

> The district court did not mention Boykin v. Alabama or otherwise appear to give any recognition to Boykin's requirement that the court that accepts a plea do its utmost to ensure that the defendant fully understand the import and consequences of his plea. To the extent that the district court may have meant to find that the state court did make the required inquiry, we conclude, on the basis of our review of the record as discussed above, that such a finding would have been clearly erroneous.

Pet.App. at 23a.

The argument that the Court of Appeals relied upon a disputed principle of law to make its decision here is refuted by the opinion itself which relies on Boykin. The petition should be denied.

III.

STATE REMEDIES WERE EXHAUSTED

The basis for the Court of Appeals decision (See II, supra,) was fully presented to the state courts (See supra at 10-11). Furthermore, although not used by the Court of Appeals for its decision, the "higher competency" test included by counsel for petitioner in the brief to the Second Circuit was presented to the state courts. As explained in the Court of Appeals decision (Pet.App. at 16a), Suggs v. LaVallee, 570 F.2d 1092 (2d Cir. 1978), and Saddler v. United States, 531 F.2d 83 (2d Cir. 1976), cases which describe the test, were cited both in the Appellate Division brief and in the Second Circuit brief.

IV.

THE COURT OF APPEALS' HOLDING
IS BASED ON LEGAL CONCLUSIONS

The petitioners, continuing to rely on an incorrect interpretation of the Court of Appeals opinion, argue that the Second Circuit made fact-finding on competency issues when it should not have done so. However, the Court of Appeals explicitly said it was examining the question of

> the capacity to knowingly and voluntarily enter a plea of guilty [which] requires both an evaluation of the record as to Matusiak's state of mind at the time the plea was entered and an assessment of what deference the federal court must give to the state court's implicit determination that it was proper to accept the plea.

Pet.App. at 17a. The Court of Appeals then discussed the deference to be given to State Court findings on questions of fact and specifically cited Maggio v. Fulford, 462 U.S. 111 (1983)(per curiam), recognizing that under Maggio competency to stand trial is a question of fact. The Court of Appeals concluded:

> Nonetheless, the ultimate "question of an effective waiver of a federal constitutional right in a proceeding is. . .governed by federal standards," Boykin v. Alabama, 395 U.S. at 243, and "the governing standard as to whether a plea of guilty is voluntary for purposes of the Federal Constitution is a question of federal law. . .and not a question of fact subject to the requirements of 28 U.S.C. §2254(d)." Marshall v. Longberger, 459 U.S. at 431 (citing Henderson v. Morgan; Boykin v. Alabama); cf. Miller v. Fenton, 106 S.Ct. 445 (1985)(voluntariness of a confession is a legal question meriting independent consideration in a federal habeas proceeding).

Pet.App. at 18a-19a.

The Court held that the record did not show the waiver of trial was intelligent, citing specific historic facts from the record which were uncontradicted. These included Matusiak's frequently articulated belief that it was the trial judge who determined guilt, followed by the trial judges statement that while the jury might accept what he told them, he (the judge) believed Matusiak was guilty. Pet.App. at 20a-21a. The record showed that Matusiak did not know the nature of the jury trial right he was waiving because he mistakenly believed the judge determined guilt and found reinforcement of his incorrect idea in the judges comments. The Court of Appeals did not disturb State findings of fact underlying the issue of waiver.

The Court of Appeals did not make any findings as to Matusiak's competence. Rather, that Court concluded that in light of the findings of two doctors one year before the plea that Matusiak was incompetent, the judge's finding a year earlier that he was competent, and the garbled and tortuous nature of the plea taken a year later, the competency at the time of the plea was not adequately developed in the record. It left for the state the function of determining competence.

CONCLUSION

For the above stated reasons the petition should be dismissed or denied.

Dated: New York, New York
August 7, 1986

Respectfully submitted,

PHYLIS SKLOOT BAMBERGER
THE LEGAL AID SOCIETY
FEDERAL DEFENDER SERVICES UNIT
531 United States Courthouse
Foley Square
New York, New York 10007
Tel. No.: (212) 732-2971

Attorney for Deceased-Respondent MATUSIA

RECORDED DISTRICT 6091 — REGISTER NUMBER 1

NEW YORK STATE DEPARTMENT OF HEALTH
CERTIFICATE OF DEATH

80A3952

STATISTICAL DISTRICT — REC — RES

DECEDENT

1 NAME: FIRST Chester — MIDDLE — LAST Matuszak

2 SEX: MALE ☒ FEMALE ☐

3a DATE OF DEATH: MONTH 6 — DAY 14 — YEAR 86

3b HOUR 7:05 A

4 AGE: 27 YEARS — IF UNDER 1 YEAR: MONTHS — DAYS — IF UNDER 1 DAY: HOURS — MINUTES

5 DECEDENT BORN: MONTH 3 — DAY 18 — YEAR 59

6 VETERAN OF U.S. ARMED FORCES? NO ☐ YES ☐ IF YES SPECIFY WAR OR DATES OF SERVICE

7 SOCIAL SECURITY NUMBER 080-50-9755

8a COUNTY OF DEATH: Wyoming

8b LOCALITY (CHECK ONE AND SPECIFY): CITY OF ☐ TOWN OF ☐ VILLAGE OF ☐

8c HOSPITAL OR OTHER INSTITUTION (IF NEITHER GIVE ADDRESS): Attica Corr. Fac.

8d IF IN HOSPITAL OR INSTITUTION (CHECK ONE): DOA ☐ EMERGENCY ROOM ☐ OUTPATIENT ☐ INPATIENT ☐

8e IF INPATIENT ADMISSION DATE: MONTH — DAY — YEAR

9 STATE OF BIRTH (COUNTRY IF NOT USA): New York

10 CITIZEN OF WHAT COUNTRY: USA

11 MARITAL STATUS (CHECK ONE): NEVER MARRIED ☒ MARRIED ☐ MARRIED OR SEPARATED ☐ WIDOWED ☐ DIVORCED ☐

12 SURVIVING SPOUSE (IF WIFE GIVE MAIDEN NAME)

13 RACE — WHITE, BLACK, AMERICAN INDIAN, ASIAN OR PACIFIC ISLANDER, OTHER (SPECIFY): White

14 SPANISH/HISPANIC ORIGIN? (IF YES CHECK ONE): MEXICAN ☐ PUERTO RICAN ☐ CUBAN ☐ CENTRAL OR SOUTH AMERICAN ☐ YES ☐ NO ☒ OTHER SPANISH/HISPANIC (SPECIFY)

15 EDUCATION (INDICATE HIGHEST GRADE COMPLETED ONLY): ELEMENTARY 0 1 2 3 4 5 6 7 8 9 10 11 12 — HIGH SCHOOL 1 2 3 4 — COLLEGE 1 2 3 4 0+

16a USUAL OCCUPATION (DO NOT ENTER RETIRED): None

16b KIND OF BUSINESS OR INDUSTRY

16c NAME AND LOCALITY OF FIRM OR COMPANY

RESIDENCE

17a STATE: New York

17b COUNTY: Wyoming

17c LOCALITY (CHECK ONE AND SPECIFY): CITY OF ☐ TOWN OF ☐ VILLAGE OF ☒ Attica

17d IF CITY OR VILLAGE IS RESIDENCE OUTSIDE CITY OR VILLAGE LIMITS? YES ☐ NO ☒ IF NO SPECIFY TOWN: Attica

17e STREET AND NUMBER OF RESIDENCE (INCLUDE ZIP CODE): Box 149, Attica, NY 14011

USUAL RESIDENCE WHERE DECEDENT LIVED

PARENTS

18a NAME OF FATHER — FIRST Chester — MIDDLE — LAST Matusiak

18b MAIDEN NAME OF MOTHER — FIRST Ramona — MIDDLE Arca — LAST

DISPOSITION

19a NAME OF INFORMANT: Inmate Records - Attica Corr. Fac.

19b MAILING ADDRESS (INCLUDE ZIP CODE): Box 149, Attica, NY 14011

20a BURIAL, CREMATION, REMOVAL OR OTHER DISPOSITION (SPECIFY): Burial — MONTH June — DAY 18 — YEAR 86

20b PLACE OF BURIAL, CREMATION OR OTHER DISPOSITION: Calvery Cemetery

20c LOCATION (CITY OR TOWN, STATE): Woodside, Queens, N.Y.

21a NAME AND ADDRESS OF FUNERAL HOME: Harley Funeral Home, Inc., 135 Main St., Attica, N.Y. 14011

21b REGISTRATION NO: 01548

22a NAME OF FUNERAL DIRECTOR: Richard D. Merle

22b SIGNATURE OF FUNERAL DIRECTOR: Richard D Merle

22c REGISTRATION NO: 03725

23a SIGNATURE OF REGISTRAR

23b DATE FILED: MONTH 6 — DAY 16 — YEAR 86

23c DATE PERMIT FOR BURIAL OR REMOVAL WAS ISSUED: MONTH 6 — DAY 16 — YEAR 86

CERTIFIER

TO BE COMPLETED BY CERTIFYING PHYSICIAN ONLY

24 A TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE TIME, DATE AND PLACE AND DUE TO THE CAUSES STATED — MONTH — DAY — YEAR

SIGNATURE

B THE PHYSICIAN ATTENDED THE DECEASED: FROM — MONTH — DAY — YEAR — TO — MONTH — DAY — YEAR

C LAST SEEN ALIVE: MONTH — DAY — YEAR

C NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER

—OR— TO BE COMPLETED BY CORONER OR MEDICAL EXAMINER ONLY

25 A ON THE BASIS OF INVESTIGATION AND/OR INVESTIGATION OF MY OPINION DEATH OCCURRED AT THE TIME, DATE AND PLACE AND DUE TO THE CAUSES STATED

SIGNATURE AND TITLE: Ralph Landahl

☐ CORONER ☐ CORONER'S PHYSICIAN ☐ MEDICAL EXAMINER

B PRONOUNCED DEAD: MONTH 6 — DAY 14 — YEAR 86 — HOUR 7:50 A.M.

C HOUR — TO DATE SIGNED: MONTH 6 — DAY 14 — YEAR 86

D SIGNATURE OF CORONER OR CORONER PHYSICIAN OTHER THAN CERTIFIER: Thru Telephone Conference with E-D

26 NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, CORONER, MEDICAL EXAMINER, CORONER'S PHYSICIAN, MEDICAL DIRECTOR): RALPH LANDAHL 26 PARK ST. ATTICA NY 14011

CAUSE

27 DEATH WAS CAUSED BY — ENTER ONLY ONE CAUSE PER LINE FOR (a), (b) AND (c). — APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH

PART I IMMEDIATE CAUSE

(a) Acute Asphyxiation

DUE TO OR AS A CONSEQUENCE OF:

(b) Cut Throat, Wounds to Neck.

DUE TO OR AS A CONSEQUENCE OF:

(c) Homicide

PART II OTHER SIGNIFICANT CONDITIONS CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (a).

28a AUTOPSY? YES ☒ NO ☐

28b IF YES WERE FINDINGS CONSIDERED IN DETERMINING THE CAUSE OF DEATH? YES ☐ NO ☐

29 WAS CASE REFERRED TO CORONER OR MEDICAL EXAMINER? YES ☒ NO ☐

30a SPECIFY IF ACCIDENT, HOMICIDE, SUICIDE, UNDETERMINED, PENDING INVESTIGATION: PENDING

30b DATE OF INJURY — MONTH 6 — DAY 14 — YEAR 86

30c HOUR OF INJURY

30d DESCRIBE HOW INJURY OCCURRED

30e INJURY AT WORK? YES ☐ NO ☐

30f PLACE OF INJURY — HOME, FACTORY, OFFICE BLDG, ETC.

30g LOCATION (STREET & NO., CITY OR VILLAGE, TOWN, COUNTY, STATE): ATTICA CORRECTIONAL ATTICA

CONDITION IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE (a) STATING THE UNDERLYING CAUSE LAST

NCHS

OR

OS

DCOD

No. 85-?110

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WALTER KELLY, Superintendent of Attica Correctional Facility, ELIZABETH HOLTZMAN, District Attorney, Kings County, and ROBERT ABRAMS, Attorney General of the State of New York,

Petitioners,

-v-

CHESTER MATUSIAK,

Deceased - Respondent

CERTIFICATE OF SERVICE

I hereby certify that three copies of the opposition to the petition for a writ of certiorari and a copy of the application for leave to proceed in forma pauperis have been served by first-class mail on the office of Elizabeth Holtzman, District Attorney, Kings County, 210 Joralemon Street, Brooklyn, New York 11201.

New York, New York
August 7, 1986

PHYLIS SKLOOT BAMBERGER
The Legal Aid Society
Federal Defender Services Unit
531 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

Attorney for the Deceased Petitioner